

## 1 SENATE BILL NO. 40

2 INTRODUCED BY D. MAHLUM

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR COORDINATION OF THE FILING,  
6 PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS;  
7 ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR  
8 THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING  
9 ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND  
10 GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND  
11 INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH  
12 AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING  
13 SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177,  
14 MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 NEW SECTION. **Section 1. Fingerprints required of applicants.** An applicant for a license under this  
19 code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person  
20 holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with  
21 the application to facilitate a fingerprint and background check by the department of justice and the federal  
22 bureau of investigation. The results of the investigation must be used by the department in determining the  
23 applicant's eligibility for a license.

24

25 **Section 2.** Section 16-1-106, MCA, is amended to read:26 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

27 (1) "Agency franchise agreement" means an agreement between the department and a person  
28 appointed to sell liquor and table wine as a commission merchant rather than as an employee.

29 (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance  
30 with this code for the purpose of selling liquor at either the posted or the retail price for off-premises

1 consumption.

2 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

3 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that  
4 contains more than 0.5% of alcohol by volume.

5 (5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

6 (6) "Beer importer" means a person other than a brewer who imports malt beverages.

7 (7) "Brewer" means a person who produces malt beverages.

8 (8) "Community" means:

9 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

10 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a  
11 community for census purposes; and

12 (c) in a consolidated local government, the area of the consolidated local government not otherwise  
13 incorporated.

14 (9) "Department" means the department of revenue, unless otherwise specified, and includes the  
15 department of justice with respect to receiving and processing, but not granting or denying, an application under  
16 a contract entered into under 16-1-302.

17 (10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices  
18 of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by  
19 volume, including but not limited to flavored, sparkling, or carbonated cider.

20 (11) "Immediate family" means a spouse, dependent children, or dependent parents.

21 (12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of  
22 Montana.

23 (13) "Liquor" means an alcoholic beverage except beer and table wine.

24 (14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction,  
25 or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their  
26 products and with or without other malted cereals and with or without the addition of unmalted or prepared  
27 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome  
28 products suitable for human food consumption.

29 (15) "Package" means a container or receptacle used for holding an alcoholic beverage.

30 (16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as

1 fixed and determined by the department and in addition an excise and license tax as provided in this code.

2 (17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains  
3 50% of alcohol by volume.

4 (18) "Public place" means a place, building, or conveyance to which the public has or may be permitted  
5 to have access and any place of public resort.

6 (19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not  
7 hold liquor licenses. The retail price may not be less than the department's posted price.

8 (20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

9 (21) "State liquor warehouse" means a building owned or under control of the department for the  
10 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

11 (22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the  
12 state of Montana off and away from the premises of a brewery, which building or structure is equipped with  
13 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as  
14 permitted by this code.

15 (23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler  
16 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine  
17 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of  
18 beer or table wine as permitted by this code.

19 (24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

20 (25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale  
21 or resale to retailers licensed in Montana.

22 (26) "Warehouse" means a building or structure located in Montana that is owned or operated by a  
23 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine  
24 as permitted by this code.

25 (27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation  
26 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur  
27 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24%  
28 of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in  
29 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic  
30 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in

1 accordance with federal regulations are also wine."  
2

3 **Section 3.** Section 16-1-302, MCA, is amended to read:

4 **"16-1-302. Functions, powers, and duties of department.** The department has the following  
5 functions, duties, and powers:

6 (1) to buy, import, have in its possession for sale, and sell liquors;

7 (2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

8 (3) to determine the municipalities where agency liquor stores are to be established throughout the state  
9 and the situation of the stores within these municipalities;

10 (4) to lease, furnish, and equip any building or land required to administer its duties under this code;

11 (5) to buy or lease plants and equipment necessary to administer its duties under this code;

12 (6) to employ the necessary employees required to administer this code and to dismiss them, assign  
13 them their title, and define their respective duties and powers and to contract with the department of justice for  
14 investigative services and to receive and process, but not grant or deny, applications or to contract for the  
15 services of experts and persons engaged in the practice of a profession, if appropriate; If the department  
16 contracts for the receipt and processing of an application by the department of justice, the application must state  
17 that it is to be filed with the department of justice.

18 (7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or  
19 sold under this code;

20 (8) to grant and issue licenses under this code;

21 (9) to place special restrictions on the use of a particular license, which must be endorsed upon the face  
22 of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of  
23 the license or if the special restrictions are agreed to by the licensee;

24 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this code  
25 or rules."  
26

27 **Section 4.** Section 16-1-304, MCA, is amended to read:

28 **"16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the state  
29 liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the  
30 department of justice directly involved with license applications or the investigation of matters concerning the

1 manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged  
2 in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of a  
3 syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some  
4 other person.

5 (2) An employee of the state, a state agent, or any person having any ownership interest in an agency  
6 liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing  
7 tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state  
8 pursuant to this code.

9 (3) A person selling or offering for sale to or purchasing liquor from the state may not directly or  
10 indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any  
11 state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an  
12 employee.

13 (4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of  
14 liquor for the purpose of chemical testing, subject to the following limitations:

15 (a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other  
16 person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the  
17 state prior to the original purchase, an analysis of each brand and may submit a representative sample not  
18 exceeding 25 fluid ounces of the merchandise to the state.

19 (b) When a brand of liquor has been accepted for testing by the state, the state shall forward the  
20 sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

21 (c) The state shall maintain written records of all samples received. The records must show the brand  
22 name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's  
23 action on the brand, and the person to whom delivered or other final disposition of the sample.

24 (5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores  
25 for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer  
26 at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall  
27 maintain a written record including the type, brand, container size, number of bottles or other units, signatures  
28 of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

29 (6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed  
30 and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum

1 amounts of liquor in the state warehouse while the distiller retains ownership of the product."

2

3 **Section 5.** Section 16-4-207, MCA, is amended to read:

4 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application  
 5 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location  
 6 of a retail license, the department shall review the application for completeness and, based upon review of the  
 7 application and any other information supplied to the department, determine whether the applicant or the  
 8 premises to be licensed meets criteria provided by law. The department may make one request for additional  
 9 information necessary to complete the application. The application is considered complete when the applicant  
 10 furnishes the application information requested by the department. ~~If the applicant does not provide the~~  
 11 ~~additional application information within 30 days of the department's request, the department shall terminate the~~  
 12 ~~application and return it to the applicant with an explanation of why the application was terminated. The~~  
 13 ~~terminated application is not a denial, and the premises identified in the application are not subject to the~~  
 14 ~~provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new~~  
 15 ~~application.~~ When the application is complete, the department shall request that the department of justice shall  
 16 investigate the application as provided in 16-4-402. When the department determines that an application for a  
 17 license under this code is complete, the department shall publish in a newspaper of general circulation in the  
 18 city, town, or county from which the application comes a notice that the applicant has made application for a  
 19 retail on-premises license or a transfer of location and that protests may be made against the approval of the  
 20 application by a person who has extended credit to the transferor or by residents of the county from which the  
 21 application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the  
 22 department of revenue within 10 days after the final notice is published. Notice of application for a new license  
 23 must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or  
 24 location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in  
 25 the following form:

26

NOTICE OF APPLICATION FOR RETAIL

27

ALL-BEVERAGES LICENSE

28 Notice is given that on the .... day of ....., 20..., one (name of applicant) filed an application for a retail  
 29 all-beverages license with the Montana department of revenue to be used at (describe location of premises  
 30 where beverages are to be sold). A person who has extended credit to the transferor and residents of .....

1 counties may protest against the approval of the application. Each protestor is required to mail a letter that  
 2 contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed  
 3 by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an  
 4 application may not be considered as a protest. Protests may be mailed to ....., department of revenue, Helena,  
 5 Montana, on or before the .... day of ....., 20...

6 Dated .....

7 Signed  
 8 .....  
 9 ADMINISTRATOR

10 (2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient  
 11 to cover the costs of publishing the notice.

12 (3) (a) If the administrator receives no written protests, the department may approve the application  
 13 without holding a public hearing.

14 (b) A response to a notice of opportunity to protest an application may not be considered unless the  
 15 response is a letter satisfying all the requirements contained in the notice in subsection (1).

16 (c) If the department receives sufficient written protests that satisfy the requirements in subsection (1)  
 17 against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

18 (4) (a) If the department receives at least one protest but less than the number of protests required for  
 19 a public convenience and necessity determination as specified in subsection (4)(c), the department shall  
 20 schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient  
 21 cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the  
 22 grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The  
 23 hearing must be governed by the provisions of Title 2, chapter 4, part 6.

24 (b) If the department receives the number of protests required for a public convenience and necessity  
 25 determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of  
 26 location, the department shall schedule a public hearing to be held in the county of the proposed location of the  
 27 license to determine whether the protest presents sufficient cause to deny the application based on the  
 28 qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided  
 29 for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions  
 30 of Title 2, chapter 4, part 6.

1 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an  
2 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the  
3 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for  
4 all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less  
5 than two. The minimum number of protests determined in this manner will apply only to applications for either  
6 on-premises consumption beer or all-beverages licenses."

7

8 **Section 6.** Section 16-4-402, MCA, is amended to read:

9 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter, the  
10 applicant shall file with the department an application containing information and statements relative to the  
11 applicant and the premises where the alcoholic beverage is to be sold as required by the department.

12 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the  
13 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department ~~shall request that the~~  
14 ~~department of justice shall~~ make a thorough investigation of all matters relating to the application. Based on the  
15 results of the investigation or on other information, the department shall determine whether:

16 (i) the applicant is qualified to receive a license;  
17 (ii) the applicant's premises are suitable for the carrying on of the business; and  
18 (iii) the requirements of this code and the rules promulgated by the department are met and complied  
19 with.

20 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2),  
21 a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided  
22 in 16-4-301.

23 (c) For an original license application and an application for transfer of location of a license, the  
24 department of justice's investigation and the department's determination under this subsection (2) must be  
25 completed within 90 days of the ~~request from the department to the department of justice~~ receipt of a completed  
26 application. If information is requested from the applicant by either department, the time period in this subsection  
27 (2)(c) is tolled until the requested information is received by the requesting department. The time period is also  
28 tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises  
29 that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline  
30 must be documented.

1 (3) Upon proof that an applicant made a false statement in any part of the original application, in any  
 2 part of an annual renewal application, or in any hearing conducted pursuant to an application, the application  
 3 for the license may be denied, and if issued, the license may be revoked.

4 (4) The department shall issue a conditional approval letter upon the last occurrence of either:

5 (a) completion of the investigation and determination provided for in subsection (2) if the department  
 6 has not received information that would cause the department to deny the application; or

7 (b) a final agency decision that either denies or dismisses a protest against the approval of an  
 8 application pursuant to 16-4-207.

9 (5) The conditional approval letter must state the reasons upon which the future denial of the application  
 10 may be based. The reasons for denial of the application after the issuance of the conditional approval letter are  
 11 as follows:

12 (a) there is false or erroneous information in the application;

13 (b) the premises are not approved by local building, health, or fire officials;

14 (c) there are physical changes to the premises that if known prior to the issuance of the conditional  
 15 approval letter would have constituted grounds for the denial of the application or denial of the issuance of the  
 16 conditional approval; or

17 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the  
 18 department's final agency decision provided for in subsection (4)."

19

20 **Section 7.** Section 16-4-406, MCA, is amended to read:

21 **"16-4-406. Renewal -- suspension or revocation -- penalty.** (1) The department ~~may upon its own~~  
 22 ~~motion and~~ shall upon a written, verified complaint of a person request that the department of justice investigate  
 23 the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

24 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the  
 25 department, after reviewing admissions of the licensee or receiving the results of the department of justice's or  
 26 a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated  
 27 a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties  
 28 prescribed:

29 (a) reprimand a licensee;

30 (b) proceed to revoke the license of the licensee;

- 1 (c) suspend the license for a period of not more than 3 months;
- 2 (d) refuse to grant a renewal of the license after its expiration; or
- 3 (e) impose a civil penalty not to exceed \$1,500.

4 ~~(3) If the department, after receiving the results of the department of justice's investigation, has~~  
 5 ~~reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules~~  
 6 ~~of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the~~  
 7 ~~department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant~~  
 8 ~~renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the~~  
 9 ~~Montana Administrative Procedure Act."~~

10

11 **Section 8.** Section 16-4-420, MCA, is amended to read:

12 **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and  
 13 wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the  
 14 requirements of this section, meets the following qualifications and conditions:

15 (a) in the case of an individual applicant:

16 (i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
 17 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
 18 with all applicable laws of the state and local governments; and

19 (ii) the applicant is not under 19 years of age;

20 (b) in the case of a corporate applicant:

21 (i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board  
 22 of directors must meet the requirements of subsection (1)(a);

23 (ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of  
 24 the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

25 (iii) the corporation is authorized to do business in Montana;

26 (c) in the case of any other business entity, including but not limited to partnerships, including limited  
 27 liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

28 (i) if the applicant consists of more than one individual, all individuals must meet the requirements of  
 29 subsection (1)(a); and

30 (ii) if the applicant consists of more than one corporation, all corporations listed on a national stock

1 exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock  
 2 exchange must meet the requirements of subsection (1)(b)(ii);

3 (d) the applicant operates a restaurant at the location where the restaurant beer and wine license will  
 4 be used or satisfies the department that:

5 (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and  
 6 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of  
 7 operation is expected to be the result of the sale of food;

8 (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the  
 9 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be  
 10 stated on the food bill; and

11 (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the  
 12 department by rule;

13 (e) the applicant understands and acknowledges in writing on the application that this license prohibits  
 14 the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines  
 15 and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine  
 16 license will be used, the activity must be discontinued or the machines must be removed before the restaurant  
 17 beer and wine license takes effect; and

18 (f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current  
 19 seating capacity if the restaurant is operating.

20 (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic  
 21 beverage may not be considered for a restaurant beer and wine license at the same location.

22 (b) A restaurant that sells its existing retail license may not apply for a license under this section for a  
 23 period of 1 year from the date that license is transferred to a new purchaser.

24 (3) ~~(a)~~ A completed application for a license under this section and the appropriate application fee, as  
 25 provided in subsection (11), must be submitted to the department. The department shall ~~request that the~~  
 26 ~~department of justice make an investigation of all~~ investigate the items relating to the application as described  
 27 in subsections (3)(a)(~~i~~) through (3)(a)(~~iv~~)(d). Based on the results of the investigation ~~or in exercising~~ and the  
 28 exercise of its sound discretion, the department shall determine whether:

29 ~~(i)~~(a) the applicant is qualified to receive a license;

30 ~~(ii)~~(b) the applicant's premises are suitable for the carrying on of the business;

1           ~~(iii)(c)~~ the requirements of this code and the rules promulgated by the department are met and complied  
2 with; and

3           ~~(iv)(d)~~ the seating capacity as stated on the application is correct.

4           ~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the~~  
5 ~~costs of the department and department of justice associated with investigating and processing applications.~~

6           (4) An application for a beer and wine license submitted under this section is subject to the provisions  
7 of 16-4-203, 16-4-207, and 16-4-405.

8           (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the  
9 department may issue a conditional license prior to completion of the premises based on reasonable evidence,  
10 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on  
11 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide  
12 restaurant, as defined in subsection (6).

13           (6) For purposes of this section, "restaurant" means a public eating place where individually priced  
14 meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross  
15 income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year  
16 after a license is issued, the applicant shall file with the department a statement, in a form approved by the  
17 department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from  
18 the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees  
19 necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space  
20 is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening  
21 dinner meal.

22           (7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be  
23 transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if  
24 there is no change of location, and the original owner may transfer location after the license is issued by the  
25 department to a new location, upon approval by the department.

26           (ii) A new owner may not transfer the license to a new location for a period of 1 year following the  
27 transfer of the license to the new owner.

28           (b) A license issued under this section may be jointly owned, and the license may pass to the surviving  
29 joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person  
30 or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property

1 upon the death of the owner in this state or in another state.

2 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of  
3 the department, transfer a restaurant beer and wine license to a new owner.

4 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

5 (i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota  
6 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that  
7 quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area  
8 pursuant to 16-4-105;

9 (ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota  
10 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that  
11 quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area  
12 pursuant to 16-4-105;

13 (iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota  
14 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that  
15 quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area  
16 pursuant to 16-4-105; and

17 (iv) for a restaurant located in a quota area that is also a resort community, as the resort community is  
18 designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine  
19 licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number  
20 of beer licenses that may be issued in that quota area pursuant to 16-4-105.

21 (b) In determining the number of restaurant beer and wine licenses that may be issued under this  
22 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the  
23 department shall round to the nearer whole number.

24 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota  
25 area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license  
26 for that quota area.

27 (d) If there are more applicants than licenses available in a quota area, then the license must be  
28 awarded by lottery as provided in subsection (9).

29 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses  
30 under this section or as the result of an increase in the population in the quota area, the nonrenewal of a

1 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department  
2 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants  
3 than number of licenses available, the license must be awarded to an applicant by a lottery.

4 (b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least  
5 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery  
6 applicants from previous selections must also be given a preference. An applicant with both preferences must  
7 be awarded a license before any applicant with only one preference.

8 (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants  
9 will be required to submit a completed application and a one-time required fee. An applicant's ranking may not  
10 be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the  
11 intended license advertised by the department or to the number of licenses determined under subsection (8)  
12 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant  
13 beer and wine license awarded by lottery must be determined at the time of the lottery.

14 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises  
15 consumption.

16 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%  
17 of the initial licensing fee. If the department does not make a decision either granting or denying the license  
18 within 4 months of receipt of a complete application, the department shall pay interest on the application fee at  
19 the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any  
20 period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or  
21 16-4-207. If the department denies ~~issuing a license to an applicant~~ an application, the application fee, plus any  
22 interest, less a \$100 processing fee established by rule, must be refunded to the applicant. Upon the issuance  
23 of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee  
24 is determined according to the following schedule:

25 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

26 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

27 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

28 (12) The annual fee for a restaurant beer and wine license is \$400.

29 (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed  
30 restaurant or if the department determines that a licensee has increased the stated seating capacity of the

1 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the  
2 time of filing the original application and issuance of a license and the applicable fees for the additional seating.

3 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101  
4 persons or more may not exceed 25% of the total licenses issued.

5 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming  
6 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a  
7 restaurant beer and wine license."

8

9 **Section 9.** Section 23-5-119, MCA, is amended to read:

10 **"23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as  
11 provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant  
12 shall own in the applicant's name:

13 (a) a retail all-beverages license issued under 16-4-201;

14 (b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105,  
15 authorizing the sale of beer and wine for consumption on the licensed premises;

16 (c) a beer and wine license issued in an area outside of an incorporated city or town as provided in  
17 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town  
18 may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title  
19 23, chapter 5, part 3, 5, or 6;

20 (d) a retail beer and wine license issued under 16-4-109;

21 (e) a retail all-beverages license issued under 16-4-202; or

22 (f) a retail all-beverages license issued under 16-4-208.

23 (2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may  
24 be transferred to a new owner or to a new location or transferred to a new owner and location by the department  
25 of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred  
26 may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

27 (3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued  
28 under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are  
29 eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

30 (4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who

1 has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title  
2 23, chapter 5, part 3, 5, or 6."

3

4 **Section 10.** Section 23-5-177, MCA, is amended to read:

5 **"23-5-177. Operator of gambling establishment -- license -- fee.** (1) It is a misdemeanor for a person  
6 who is not licensed by the department as an operator to make available to the public for play a gambling device  
7 or gambling enterprise for which a permit must be obtained from the department.

8 (2) To obtain an operator's license, a person shall submit to the department:

9 (a) a completed operator's license application on a form prescribed and furnished by the department;

10 (b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding  
11 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to  
12 be used for a fingerprint and background check that must be used by the department in determining eligibility  
13 for a license;

14 ~~(b)~~(c) any other relevant information requested by the department; and

15 ~~(e)~~(d) a license application processing fee, as required in subsection (8).

16 (3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117,  
17 the premises in which the gambling activity is to be conducted.

18 (4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage  
19 licenses issued for a premises, the department may issue only one operator's license for the premises.

20 (5) An operator's license must include the following information:

21 (a) a description of the premises upon which the gambling will take place;

22 (b) the operator's name;

23 (c) a description of each gambling device or card game table for which a permit has been issued to the  
24 operator by the department for play upon the premises, including the type of game and permit number for each  
25 game; and

26 (d) any other relevant information determined necessary by the department.

27 (6) The operator's license must be issued annually along with all other permits for gambling devices  
28 or games issued to the operator.

29 (7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card  
30 game table permit is newly issued or the machine or game is removed from the premises.

1           (8) The department shall charge an applicant who has submitted an operator's license application on  
2 or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the  
3 department in determining whether the applicant qualifies for licensure under 23-5-176. After making its  
4 determination, the department shall refund any overpayment or charge and collect amounts sufficient to  
5 reimburse the department for any underpayment of actual costs.

6           (9) The operator's license must be prominently displayed upon the premises for which it is issued."  
7

8           NEW SECTION. **Section 11. Repealer.** Section 16-4-403, MCA, is repealed.  
9

10          NEW SECTION. **Section 12. Codification instruction.** [Section 1] is intended to be codified as an  
11 integral part of Title 16, chapter 4, part 4, and the provisions of Title 16 apply to [section 1].  
12

13          NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.  
14

- END -